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9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 THAD AUBERT,

12 Plaintiff,

13 vs.

14 JAMES DZURENDA, *et al.*,

15 Defendants.

Case No. 2:18-cv-01329-GMN-EJY

**MOTION FOR EXTENSION
OF TIME TO FILE MOTION FOR
SUMMARY JUDGMENT AND
REQUESTING THAT THE DUE DATE
BE EXTENDED FROM
SEPTEMBER 15, 2020, TO
NOVEMBER 14, 2020**

(SECOND REQUEST)

18 Former Director James Dzurenda (Director Dzurenda), then Warden Brian Williams
19 (Warden Williams), then Warden Dwight Neven (Warden Neven) and Former Director
20 James Cox (Cox), by and through Aaron D. Ford, Attorney General for the State of Nevada,
21 and Katlyn M. Brady, Deputy Attorney General, hereby file this motion for an extension of
22 time to move for summary judgment. While this is the second motion to extend this
23 deadline filed by Defendants, it is the first request by current counsel. Should the court
24 grant this extension, it would move the due date for the motion for summary from
25 September 15, 2020 to November 14, 2020.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. BACKGROUND**

3 On July 21, 2020, prior counsel filed a motion for an extension of time to file a
4 dispositive motion. ECF No. 91. The basis for the motion was that prior counsel for
5 Defendants had been on prolonged medical leave. *Id.* This Court granted the motion and
6 gave Defendants until September 15, 2020. ECF No. 93.

7 For several reasons, Defendants request an additional extension of sixty (60) days to
8 move for summary judgment; the Deputy Attorney General (DAG) responsible for this case
9 transferred to another division within the Attorney General's Office on September 9, 2020.
10 Prior to the transfer, this attorney was on prolonged and intermittent medical need which
11 further delayed completing the motion for summary judgment. Declaration of Counsel
12 attached as Exhibit A.

13 The case has been reassigned to Alexander Smith,¹ a newly appointed DAG, who
14 arrived later than anticipated in Las Vegas due to COVID-19 and relocation issues and the
15 obtaining of his State Bar licensure number. Exhibit A. Due to the technological issues,
16 and delay in receiving a Nevada State Bar number, the secondary attorney in this matter
17 was asked to complete a motion for extension of time. *Id.* Once these issues are resolved,
18 Alexander Smith will file an appearance in this matter. *Id.* Until this occurs, the secondary
19 attorney for this matter will begin work on the motion for summary judgment to ensure it
20 is completed.

21 Further, due to the current pandemic, counsel is forced to work from home and has
22 suffered numerous technological failures. *Id.* Currently, the State of Nevada is suffering a
23 network failure state wide and a failure of the "virtual machine environment" which has
24 prevented hundreds of employees from being able to access any files. *Id.* These issues have
25 been occurring for weeks as access is restored intermittently. It is believed these issues are

26 ¹ Due to technological issues and failures, Alexander Smith is unable to draft and
27 file this document. Accordingly, secondary Deputy Attorney General Katlyn M. Brady has
28 entered an appearance in this matter and will continue working on the dispositive motion
until these failures are resolved. Exhibit A.

1 a result of the government's attempt to move thousands of employees onto a remote access
 2 server due to the COVID Pandemic. These failures prevent the attorneys, support staff,
 3 and management, from accessing any case files until the network is restored and the
 4 "virtual machine environment" is "stabilized". Further, as the Attorney General's Office
 5 works with confidential files, the attorneys cannot complete their work on private devices
 6 or software as it does not contain the same security protections.

7 Although it was anticipated that new counsel would be able to prepare and submit
 8 a dispositive motion by September 15, 2020, the unexpected technological failures and
 9 licensing delays have prevented completion. Accordingly, Defendants respectfully request
 10 an extension of sixty (60) days to file a dispositive motion. This will place the dispositive
 11 motion deadline at November 14, 2020.

12 **II. LEGAL STANDARD**

13 Rule 6(b)(1), Federal Rules of Civil procedure, provides that:

14 When an act may or must be done within a specified time, the court
 15 may, for good cause, extend the time: (A) with or without motion or
 16 notice if the court acts, or if a request is made, before the original time
 17 or its extension expires; or (B) on motion made after the time has
 18 expired if the party failed to act because of excusable neglect.

19 Rule 16(b)(4) requires that a request to modify a deadline be supported by a showing
 20 of good cause, which hinges primarily on a showing that a movant in a case could not
 21 reasonably meet the deadline despite the diligence of the movant. *See Johnson v.*
Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992).²

22 Pursuant to Federal Local Court Rule 26-3,³ a movant must demonstrate good cause
 23 to extend a deadline if the motion is filed within 21 days of the subject deadline. Further,
 24 the movant must include: a statement of completed discovery, a statement of outstanding
 25 discovery, the reason the deadline was not completed, and a proposed schedule for all
 26 remaining discovery.

27 ² This motion is filed in compliance with LR IA 6-1 as it lists "Second Request" in the
 28 caption.

29 ³ This motion is filed in compliance with the April 2020 rule update which renumbered the
 30 discovery rules.

1 **III. LEGAL ARGUMENT**

2 **A. Good Cause Supports the Extension**

3 As the dispositive motion deadline is today, this motion falls within the 21-day
4 window and thus Defendants must demonstrate good cause. This Court should find good
5 cause supports an extension of time to file a dispositive motion. It was previously believed
6 that prior counsel would be able to complete the dispositive motion by September 15, 2020.
7 However, due to medical leave and counsel's subsequent transfer from the Public Safety
8 Division, he was unable to do so. Exhibit A.

9 This matter was then assigned to Deputy Attorney General (DAG) Alexander
10 Smith. *Id.* However, the Nevada Officer of the Attorney General has suffered numerous
11 technological failures over the past two weeks that have prevented DAG Smith from
12 completing the dispositive motion. *Id.* These include being unable to access any case files
13 or electronic storage systems. *Id.* Accordingly, as secondary DAG, signing counsel has been
14 forced to substitute into this matter to begin work on the dispositive motion deadline. *Id.*
15 This further increases the changes that either the primary DAG or secondary DAG will
16 have the technological capabilities to work on the motion and will hopefully prevent any
17 further delays.

18 Accordingly, good cause supports an extension based upon the technological failures
19 and prior counsel's departure.

20 **B. Compliance with LR 26-3**

21 Defendants present the following information in accordance with LR 26-3.

22 **1. A Statement of Completed Discovery**

23 The following discovery has been completed in this matter: Plaintiff's First Request
24 for Documents and Plaintiff's Second Request for Documents. Exhibit A.

25 **2. A Description of Outstanding Discovery**

26 As discovery has closed in this matter, there are no outstanding discovery requests.
27 There appears to be no request from Plaintiff to reopen or extend discovery in this matter.

28 /././

3. The Reasons why the Deadline was not Completed

The prior dispositive deadline was not completed because prior counsel transferred out of the Public Safety Division before completing the motion. Further, DAG Smith has been unable to complete a dispositive motion due to technological difficulties that included the inability to access case records. To ensure, the deadline will be completed, the secondary DAG has entered an appearance in this matter and will supervise completion of the dispositive motion. Exhibit A. This is to increase the likelihood that at least one attorney will have access to case files and the ability to work on the dispositive motion deadline.

4. Proposed Schedule for Remaining Discovery

Dispositive Motion Deadline: November 14, 2020

Joint Pretrial Order: The parties shall file a joint pretrial order on or before December 14, 2020. In the event dispositive motions are filed, the date for filing the joint pretrial order shall be suspended until 30 days after a decision on the dispositive motions or until further order of the Court.

IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request the granting of an additional sixty (60) days to move for summary judgment. Accordingly, Defendants request that the current due date of September 15, 2020, be moved to November 14, 2020.

Dated: September 15, 2020.

AARON D. FORD
Attorney General

By: /s/ Katlyn M. Brady

Katlyn M. Brady
Deputy Attorney General
Attorneys for Defendants

ORDER

IT IS HEREBY ORDERED that the above Motion for Extension of Time to File Motion for Summary Judgment, (ECF No. 99), is **GRANTED**. Defendants shall have until November 14, 2020, to move for summary judgment.

DATED this 15 day of September, 2020.

Gloria M. Navarro, District Judge
United States District Court

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on September 15, 2020, I electronically filed the foregoing, **MOTION FOR EXTENSION OF TIME TO FILE MOTION FOR SUMMARY JUDGMENT AND REQUESTING THAT THE DUE DATE BE EXTENDED FROM SEPTEMBER 15, 2020, TO NOVEMBER 14, 2020 (SECOND REQUEST)**, via this Court's electronic filing system. Parties who are registered with this Court's electronic filing system will be served electronically. For those parties not registered, service was made by depositing a copy for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada.

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Plaintiff, Pro Se

/s/ Natasha D. Petty
An employee of the Office of the
Nevada Attorney General